

BLANK ROME LLP  
Attorneys for Defendants  
Jeremy J.O. Harwood (JH 9012)  
405 Lexington Avenue  
New York, NY 10174  
(212) 885-5000

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

EXMAR SHIPPING N.V.,

Plaintiff,

v.

POLAR SHIPPING S.A., et al.,

Defendants.

06 CIV 12991(HB)

**MEMORANDUM OF LAW IN SUPPORT OF  
DEFENDANTS' APPLICATION FOR AN  
EXPEDITED HEARING ON AND IN SUPPORT OF  
ITS REQUEST TO REDUCE PLAINTIFF'S  
MARITIME ATTACHMENT IN EXCHANGE FOR  
SUBSTITUTE SECURITY AND OTHER RELIEF**

**PRELIMINARY STATEMENT**

Defendants POLAR SHIPPING S.A., et al., (collectively "Polar") respectfully submit this memorandum of law in support of its motion to reduce the amount of this Court's Ex Parte Order for Process of Maritime Attachment obtained by Plaintiff EXMAR SHIPPING N.V. ("Exmar") pursuant to amended verified complaint dated November 9, 2006.

### **THE RELEVANT FACTS**

The facts are fully stated and supported in the accompanying affidavit of Jeremy J.O. Harwood dated January 30, 2007 and the exhibits referred to herein.

1. Exmar's counsel, by letter dated November 16, 2006, advised that "the amount of \$1,604,540.14 has been restrained at ABN-AMRO Bank N.V. in connection with the attachment" (the "Attached Amount"). Aff. Ex. 1.

2. As acknowledged in the Complaint, the disputes are governed by English law and are subject to London arbitration. Id. ¶ 41.

3. London solicitors for the parties attempted to reach agreement for substitute security and an English escrow the attached sum.

4. Exmar's New York counsel, despite the eminency of the status conference, has not received "instructions."

### **DISCUSSION**

#### **POINT I**

#### **POLAR IS ENTITLED TO AN EXPEDITED HEARING**

Admiralty Rule E(4)(f) permits a person claiming an interest in the attached property "a prompt hearing at which the plaintiff shall be required to show why the ... attachment should not be vacated or other relief granted consistent with these rules." F.R. Civ. P. Supp. R. E(4)(f).

As stated by Judge Rakoff in Aqua Stoli Shipping Ltd. v. Gardner Smith Pty. Ltd., 384 F.Supp. 2d 726, 729 (S.D.N.Y 2006), vacated on other grounds, 460 F.3d 434 (2d

Cir. 2006) “the ease with which a prima facie case for attachment can be made creates a real risk of abusive use of the maritime remedy.”

The constitutional concerns for grant of a pre-judgment attachment of a defendant’s assets, ex parte, are reflected in Local Rule E.1’s requirement for a hearing within three court days, unless otherwise ordered”.

## **POINT II**

### **THE SHIPOWNER PLAINTIFF BEARS THE BURDEN OF JUSTIFYING THE CONTINUANCE OF THE ATTACHMENT**

The defendant may challenge both the complaint and the security demanded at a Rule (E)(4)(f) hearing, Maersk, Inc. v. Neewra, Inc., No. 05 Civ. 4356 (RCC), 2006 WL 2168452, at \*7 (S.D.N.Y. Aug. 1, 2006) (citing Aqua Stoli, 384 F. Supp. 2d at 728 (quoting Supplemental Rule E’s Advisory Committee Notes)). Most significantly, the plaintiff has the burden of justifying the continuance of the attachment.

## **POINT III**

### **EXMAR SHOULD BE REQUIRED TO ACCEPT A CLUB LETTER FOR THE INSURED PORTION OF THE CLAIM**

Polar and its protection and indemnity association The Steamship Mutual Underwriting Association (Bermuda) Ltd. (“Steamship”) have agreed that a portion of Exmar’s claim, up to the sum of \$300,000, is covered by marine indemnity insurance. Steamship, whose “members” or insureds have been represented by Exmar’s counsel on numerous occasions, is fully familiar with the standard terms of a P&I Club letter of undertaking (“LOU”). Such an LOU has been offered here in standard wording. Aff. Ex.

2. The only difference is that as Exmar has fully secured its estimated claim for interest (\$246,161.69) and legal fees and costs (\$100,000) there is no need for the Steamship LOU to cover interest and legal fees and costs over \$300,000, which are secured by the balance of the Attached Amount.

Exmar's counsel has no instructions from its client thus necessitating this motion to accept the Steamship LOU.

#### **POINT IV**

#### **POLAR REQUESTS AND EXMAR CANNOT OBJECT TO THE BALANCE OF THE ATTACHED AMOUNT BEING PAID INTO THE COURT'S REGISTRY**

The balance of the Attached Amount, after release of \$300,000, is \$1,304,540.14 (the "Balance"). The Balance remains Polar's property subject to the attachment. Polar seeks an order directing that the garnishee bank pay the balance into the Court's Registry, where it will earn interest.

Such relief is specifically contemplated by Supplemental Rule E(c) and (d), and is common practice in this Court. Exmar's New York counsel again has not obtained instructions to stipulate to this relief thus forcing this motion, albeit likely uncontested, on the eve of the conference date.

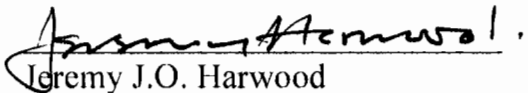
**CONCLUSION**

Polar. respectfully requests that the Court at the scheduled hearing on February 1, 2007 grant the relief requested herein and grant such other and further relief as may be equitable.

Date: New York, New York  
January 30, 2007

Respectfully submitted,

BLANK ROME LLP

By:   
Jeremy J.O. Harwood  
405 Lexington Avenue  
New York, New York 10174  
(212) 885-5000

*Attorneys for Defendants  
POLAR SHIPPING S.A., et al.*



EMERGENCY MOTION UNDER RULE E(4)(f) OF THE  
SUPPLEMENTAL RULES FOR CERTAIN ADMIRALTY AND ASSET  
FORFEITURE CLAIMS AND LOCAL ADMIRALTY RULE E.1 FOR  
AN EXPEDITED HEARING, ORDER DIRECTING SUBSTITUTE  
SECURITY AND OTHER RELIEF

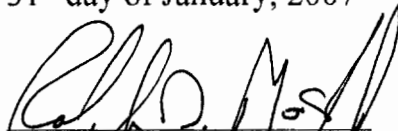
AFFIDAVIT IN SUPPORT OF MOTION UNDER RULE E(4)(f) OF THE  
SUPPLEMENTAL RULES FOR CREATION CERTAIN ADMIRALTY  
AND MARINE CLAIMS AND LOCAL ADMIRALTY RULE E.1 FOR  
AN EXPEDITED HEARING AND VACATUR OR REDUCTION OF  
PLAINTIFF'S MARITIME ATTACHMENT

by FedEx courier upon:

James L. Ross, Esq.  
Freehill Hogan & Mahar LLP  
New York, NY 10005

  
RENEE KINTZER

Sworn to before me this  
31<sup>st</sup> day of January, 2007

  
Notary Public

**RALPH D. MOSLEY JR.**  
Notary Public, State of New York  
No. 52-4796627  
Qualified in Suffolk County  
Certificate Filed in New York County  
Commission Expires 6/30/07